

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTONIO LARREN TAYLOR,

Petitioner,

No. CIV S-04-2123 GEB KJM P

vs.

SAN JOAQUIN COUNTY,

Respondent.

ORDER AND

FINDINGS & RECOMMENDATIONS

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254<sup>1</sup> together with a request to proceed in forma pauperis under 28 U.S.C. § 1915. Petitioner has submitted a declaration that makes the showing required by § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted. 28 U.S.C. § 1915(a).

The exhaustion of state court remedies is a prerequisite to the granting of a petition for writ of habeas corpus. 28 U.S.C. § 2254(b)(1). A petitioner satisfies the exhaustion requirement by providing the highest state court with a full and fair opportunity to consider all

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<sup>1</sup> This action is proceeding on the amended petition for writ of habeas corpus submitted by petitioner on November 21, 2005.

1 claims before presenting them to the federal court. Picard v. Connor, 404 U.S. 270, 276 (1971);  
2 Middleton v. Cupp, 768 F.2d 1083, 1086 (9th Cir.), cert. denied, 478 U.S. 1021 (1986).

3 After reviewing the petition for habeas corpus, the court finds that petitioner has  
4 failed to exhaust state court remedies with respect to all of his claims. The claims have not been  
5 presented to the California Supreme Court. Further, there is no allegation that state court  
6 remedies are no longer available to petitioner. Accordingly, the petition should be dismissed  
7 without prejudice.<sup>2</sup>

8 Petitioner has filed a motion seeking appointment of counsel. In light of the  
9 foregoing, petitioner's motion will be denied.

10 Good cause appearing, IT IS HEREBY ORDERED that:

- 11 1. Petitioner is granted leave to proceed in forma pauperis;
- 12 2. Petitioner's November 8, 2005 motion for the appointment of counsel is  
13 denied; and
- 14 2. The Clerk of the Court is directed to serve a copy of these findings and  
15 recommendations together with a copy of the petition filed in the instant case on the Attorney  
16 General of the State of California.

17 IT IS HEREBY RECOMMENDED that petitioner's November 21, 2005  
18 application for a writ of habeas corpus be dismissed for failure to exhaust state remedies.

19 These findings and recommendations will be submitted to the United States  
20 District Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within  
21 twenty days after being served with these findings and recommendations, petitioner may file  
22 written objections with the court. The document should be captioned "Objections to Findings  
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24 <sup>2</sup> Petitioner is cautioned that the habeas corpus statute imposes a one year statute of  
25 limitations for filing non-capital habeas corpus petitions in federal court. In most cases, the one  
26 year period will start to run on the date on which the state court judgment became final by the  
conclusion of direct review or the expiration of time for seeking direct review, although the  
statute of limitations is tolled while a properly filed application for state post-conviction or other  
collateral review is pending. 28 U.S.C. § 2244(d).

1 and Recommendations." Petitioner is advised that failure to file objections within the specified  
2 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153  
3 (9th Cir. 1991).

4 DATED: May 9, 2006.

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10 UNITED STATES MAGISTRATE JUDGE

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